

1
2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 ABDULLAH MUJAHID,

7 Plaintiff,

8 v.

9 KELLY J. CUNNINGHAM, MARK DAVIS,
10 DONALD GAUNTZ, RANDY PECHEOS,
11 KRISTINA SPARKS, CARISSA
12 BONNEMA, JEREMY P. DORFNER, LAN
BITOW, and ALEC BRIAN,

Defendants.

No. C10-5916 BHS/KLS

ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO FILE AN
AMENDED COMPLAINT

13 Before the Court is Plaintiff's Motion for Leave to File an Amended Complaint. ECF
14 No. 46. Having reviewed the motion, Defendants' opposition (ECF No. 52), and balance of the
15 record, the Court finds that the motion should be denied.

16 **BACKGROUND**

17 Mr. Mujahid filed this civil rights complaint on December 14, 2010 against the nine
18 defendants named above, claiming violations of due process, First Amendment rights of
19 association and freedom of association, and Fourteenth Amendment right of equal protection.
20 He seeks \$290,000.00 in compensatory and punitive damages. ECF No. 4. Mr. Mujahid alleges
21 that SCC mailroom staff returned mail addressed to him because the mail was not pre-approved,
22 placed other items addressed to him in the trash, mishandled his legal mail, placed him on
23 mailroom restrictions, and retaliated against him because he legally changed his name and he
24 used both names in his mail. *Id.*, pp. 5-6.
25
26

1 Mr. Mujahid claims that SCC Policy 202 (Resident Postage, Packages, Mail & Internal
2 Distribution) and Policy 208 (Sexually Explicit, Violent and Related Material)¹ are
3 unconstitutional. He also alleges that SCC's "Approved Clinical Director's List" and SCC
4 Policy 208 place higher restrictions on his religion by requiring that "periodicals" must be
5 included in the Director's List. *Id.*, p. 7.

6
7 Defendants filed their motion for summary judgment on June 16, 2011. ECF No. 43. On
8 June 29, 2011, Mr. Mujahid filed this motion for leave to file an amended complaint (ECF No.
9 46), a proposed First Amended Complaint (ECF No. 46-1), and a Motion for a Stay on
10 Defendant's (sic) Motion for Summary Judgment (ECF No. 47). He filed his response to
11 Defendants' summary judgment motion on July 5, 2011. ECF No. 49. Under separate Order,
12 Plaintiff's motion for a stay has been denied.

13 DISCUSSION

14
15 Rule 15 of the Federal Rules of Civil Procedure provides that a party "may amend its
16 pleading only with the opposing party's written consent or the court's leave. The court should
17 freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). In deciding whether
18 justice requires granting leave to amend, courts are to consider "the presence or absence of
19 undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous
20 amendments, undue prejudice to the opposing party and futility of the proposed amendment."
21 *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 538 (9th Cir. 1989). "[T]he most
22 important [factor] is whether amendment would result in undue prejudice to the opposing
23 party" *William Inglis & Sons Baking Co. v. ITT Continental Baking Co., Inc.*,

24
25
26 ¹Copies of Policy 202 (Resident Postage, Packages, Mail & Internal Distribution) and Policy 208 (Sexually Explicit,
Violent and Related Material) are attached to the Declaration of Cathi D. Harris. ECF No. 28, Attachs. B and C,
respectively.

1 668 F.2d 1014, 1053 n.68 (9th Cir. 1982).

2 “Late amendments to assert new theories are not reviewed favorably when the facts and
3 the theory have been known to the party seeking amendment since the inception of the cause of
4 action.” *Acri v. International Ass’n of Machinists & Aerospace Workers*, 781 F.2d 1393, 1398-
5 99 (9th Cir. 1986). *See also Equal Employment Opportunity Comm’n v. Boeing Co.*, 843 F.2d
6 1213, 1222 (9th Cir.), *cert. denied*, 109 S. Ct. 222 (1988) (court denied party right to amend
7 complaint where party had had knowledge of allegations that it sought to include since before
8 the filing of the suit). The *Acri* Court determined that plaintiffs’ motion to amend was brought
9 to avoid the possibility of an adverse summary judgment ruling, and that allowing amendment
10 would prejudice defendants because of the necessity for further discovery. *Acri*, 781 F.2d
11 at 1398-99.

13 Mr. Mujahid filed his motion for leave to file an amended complaint after Defendants
14 filed their motion for summary judgment. He raises no new claims in his proposed amended
15 complaint. His central complaint is that SCC’s mail policies are unconstitutional. ECF No. 46-
16 1, p. 1 (“Throughout this period and through discovery, it became clear that what is being
17 directly challenged was SCC Policy 208 and which has also created the “Clinical Director’s Pre-
18 Approved Magazine List”). Mr. Mujahid’s claim that SCC’s policies concerning handling and
19 scanning of mail are unconstitutional remains a central theme, one which was raised in his
20 original complaint and has been raised in each subsequent pleading, including three motions for
21 injunctive relief rejected by this Court.

24 The major distinctions between the original complaint and Mr. Mujahid’s proposed
25 amended complaint are changes to the named defendants and damages sought. In his proposed
26 amended complaint, Mr. Mujahid names as defendants only Kelly Cunningham, Superintendent

1 of the SCC, and Residential Rehabilitation Counselor (RRC) Kristina Sparks. ECF No. 46-1.

2 The remaining seven defendants are no longer included. He no longer seeks compensatory and
3 punitive damages, but asks for a declaratory judgment that SCC's Policy 208(7) and (8) and the
4 Clinical Director's Pre-Approved Magazine List are unconstitutional. *Id.*

5 Defendants argue that Mr. Mujahid should not be allowed to amend his complaint at this
6 stage of the litigation because the amendment will unfairly prejudice the seven defendants that
7 Mr. Mujahid proposes to drop from this litigation. The Court agrees. The original defendants
8 have litigated this case for eight months. They have defended three motions for injunctive relief
9 and have filed a motion for summary judgment, in which they seek dismissal with prejudice.
10 Without the finality of such a judgment, their efforts to date will have been for naught and the
11 claims that they have litigated will abate only until such time as Mr. Mujahid decides to re-allege
12 and re-litigate them.
13

14 Defendants' motion for summary judgment addresses Mr. Mujahid's allegations that
15 SCC's mail policies are unconstitutional. The legal bases supporting Defendants' motion also
16 apply to the proposed amended claim. Thus, amendment is not necessary. Further, this Court
17 has repeatedly ruled that the SCC's mail screening policies do not violate the Constitution. *See*
18 *Spicer v. Richards*, C07-5109 FDB/KLS at ECF No. 48 (rejecting plaintiff's assertion that SCC
19 Policy 208 is not rationally related to SCC's legitimate interest in maintaining a therapeutic
20 treatment environment); *Stewart v. Richards*, C08-5275 RJB/KLS at ECF No. 24 and Order at
21 ECF No. 27 (dismissing on summary judgment claim that SCC's mail screening process violates
22 the First Amendment); *Dudgeon v. Cunningham*, C10-5372 RBL/KLS at ECF No. 19 and Order
23 at ECF No. 21 (denying preliminary injunction regarding screening incoming mail, interlocutory
24 appeal denied, Ninth Circuit Cause No. 10-36109).
25
26

1 An amendment at this stage in the case is not necessary and will only cause unnecessary
2 and prejudice to the present Defendants. Mr. Mujahid's claims against all nine original
3 defendants should be decided on the merits.

4 It is, therefore, **ORDERED**:

5 (1) Plaintiff's Motion to Amend (ECF No. 46) is **DENIED**.

6 (2) The Clerk is directed to send copies of this Order to Plaintiff and counsel for
7 Defendants.
8

9
10 **DATED** this 19th day of July, 2011.

11
12 
13 Karen L. Strombom
14 United States Magistrate Judge
15
16
17
18
19
20
21
22
23
24
25
26